

August 3, 2006

DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Thomas J. Beauford

Date of Filing: May 30, 2006

Case Number: TFA-0164

On May 30, 2006, Thomas J. Beauford filed an Appeal from a final determination that the Oak Ridge Office (Oak Ridge) of the Department of Energy (DOE) issued on May 4, 2006, in which Oak Ridge stated that it did not have a copy of the audiogram that Mr. Beauford was requesting pursuant to the Privacy Act, 5 U.S.C. ' 552a, as implemented by the DOE in 10 C.F.R. Part 1008. This Office does not believe that Oak Ridge has a copy of the audiogram.

*I. Background*

On February 14, 2006, Mr. Beauford requested, under the Privacy Act, a copy of his medical records. On April 21, 2006, Oak Ridge sent Mr. Beauford a letter indicating that it did not have a copy of his medical records and he should request those records from his employer, British Nuclear Fuels Limited (BNFL). Determination Letter dated April 21, 2006, from Amy Rothrock, Oak Ridge to Mr. Beauford. On April 29, 2006, Mr. Beauford requested, also under the Privacy Act, a copy of his audiogram. On May 4, 2006, Oak Ridge responded that it had no medical records for Mr. Beauford, and therefore, no audiogram. In this Appeal filed on May 30, 2006, Mr. Beauford states that he did have an audiogram taken. Appeal letter dated May 15, 2006, from Mr. Beauford to Director, Office of Hearings and Appeals (OHA), DOE. If granted, the Appeal would require Oak Ridge to produce a copy of the audiogram.

*II. Analysis*

We will examine whether Oak Ridge should have possession of Mr. Beauford's audiogram. The Privacy Act permits individuals to gain access to records or to information pertaining to them that is contained in systems of records maintained by federal agencies. 5 U.S.C. ' 552a(d)(1). DOE regulations define a system of records as a group of any records under DOE control from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particulars

assigned to the individual.@ 10 C.F.R. ' 1008.2(m). Under the Privacy Act, an agency that issues a determination to a requester must ensure that it has searched for records that are retrieved by name or other personal identifier of the requester in every relevant system of records under its control. *Diane C. Larson*, 27 DOE & 80,110 (1998).

Oak Ridge has informed us that the information Mr. Beauford is requesting is of a type held by his employer, BNFL. Thus, the initial inquiry in this case is whether BNFL, who possibly possesses the records in question, is an Agency@ as defined in the Privacy Act. The Privacy Act adopts the definition of Agency@ as used in the Freedom of Information Act (FOIA). 5 U.S.C. ' 552a(1). The FOIA defines the term Agency@ to include any Aexecutive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch . . . or any independent regulatory agency.@ 5 U.S.C. ' 552(f). The Supreme Court has held that an entity will not be considered a federal agency for purposes of the FOIA unless its operations are subject to Aextensive, detailed, and virtually day-to-day supervision.@ *Forsham v. Harris*, 445 U.S. 169, 180 & n. 11 (1980) (citing *United States v. Orleans*, 425 U.S. 807 (1976)). In the present case, although BNFL is a DOE contractor, the DOE did not conduct extensive, detailed, and day-to-day supervision of its operations. BNFL provides a service on a fixed-price basis. Electronic Mail Message dated June 15, 2006, from Linda Chapman, Oak Ridge, to Janet Fishman, OHA, DOE (June 15, 2006 Electronic Mail Message). We therefore conclude that BNFL is not an Agency@ within the meaning of the FOIA.

However, the Privacy Act provides a specific exception for government contractors. AWhen an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system.@ 5 U.S.C. ' 552a(m)(1). Moreover, the DOE Privacy Act regulations apply to DOE contractors and their employees to the extent required by 5 U.S.C. ' 552a(m). 10 C.F.R. ' 1008.1(c). The DOE contract with BNFL does not provide for the maintenance of a system of records by BNFL to accomplish an agency function. June 15, 2006 Electronic Mail Message. Based on the foregoing, we conclude that the records sought by Mr. Beauford in his request are not contained in a system of records maintained by or for Oak Ridge. Mr. Beauford needs to request such records from BNFL, if it maintains such records.

### *III. Conclusion*

Oak Ridge cannot produce Mr. Beauford-s audiogram because it does not have it or his other medical records. These records are not Agency records@ nor are they in a DOE system of records that would make them subject to the Privacy Act. The Appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed on May 30, 2006, by Thomas J. Beauford, Case No. TFA-0164, is hereby denied.

(2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. ' 552a(g)(1). Judicial review may be sought in the district where the requester resides or has a principal place of business or in which the agency records are situated or in the District of Columbia.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: August 3, 2006